

BEFORE THE  
GOVERNING BOARD OF THE  
WINTERS JOINT UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Reduction or Elimination of  
Particular Kinds of Certificated Services for the  
2011-2012 School Year:

OAH No. 2011020721

DOROTHEA BELL  
GUADALUPE CLANTON  
JENNIFER HOOVER  
RAENA LAVELLE  
SUSAN REYCROFT  
RAQUEL ULLOA-MENDOZA  
NORMA ROBLES

Respondents.

**PROPOSED DECISION**

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, in Winters, California, on April 26, 2011.

James Scot Yarnell, Attorney at Law, represented the Winters Joint Unified School District (district).

Peter McEntee, Attorney at Law, represented respondents, Dorothea Bell, Guadalupe Clanton, Jennifer Hoover, Raena Lavelle, Susan Reycroft, Raquel Ulloa-Mendoza, and Norma Robles.

There were no unrepresented respondents.<sup>1</sup>

Evidence was received, the record was closed, and the matter was submitted for decision on April 26, 2011.

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<sup>1</sup> At hearing, respondent Guadalupe Clanton was represented by counsel for purposes of challenging the district's application of the competency criteria; however, she represented herself for the purpose of asserting her right to inverse bumping.

## FACTUAL FINDINGS

1. The district serves kindergarten through twelfth grade students and has five sites: K-third grade primary school; fourth and fifth grade intermediate school; sixth through eighth grade middle school; ninth through twelfth grade comprehensive high school; and continuation high school.

2. On March 3, 2011, the Board of Trustees (board) of the District adopted Resolution No. 863-11, entitled “Resolution of the Winters Joint Unified School District Board of Trustees Relative to the Reduction or Elimination of Particular Kinds of Certificated Services” (Resolution). Pursuant to the Resolution, the board determined that it was necessary for the district to reduce or eliminate certain particular kinds of services (PKS) and to decrease a corresponding number of certificated district employees not later than the beginning of the 2011-2012 school year. In the Resolution, the board directed the Superintendent to send notices to all employees affected by the PKS reductions or eliminations. The board also directed the Superintendent or her designee to make assignments and reassignments of certificated employees following implementation of the PKS reductions or eliminations to ensure that each remaining certificated employee is assigned to a position for which he or she is properly credentialed to perform pursuant to Education Code section 44955.<sup>2</sup>

3. The Resolution identified the following particular kinds of services for reduction or elimination:

### I. Classroom Teaching Services:

A. Grade K-3 Elementary Teachers	2.00 FTE <sup>3</sup>
B. Grade 405 Elementary Teachers	1.50 FTE
C. Grade 405 Special Ed (RSP) Teacher	.50 FTE
D. Middle School Science Teacher	.57 FTE
E. Middle School 7 <sup>th</sup> Grade ELA Teacher	1.00 FTE
F. Middle School 7 <sup>th</sup> Grade Math	.28 FTE
G. Middle School Math Teacher	1.00 FTE
H. High School Social Science Teacher	.50 FTE
I. High School English Teacher	.33 FTE
J. High School Student Government Teacher	.17 FTE
K. High School Math Teacher	.33 FTE
L. High School Spanish for Spanish Speakers I/II	.33 FTE
M. High School Language Lab Teacher	.33 FTE
N. High School Foreign Language (Spanish) Teacher	.17 FTE
O. High School ELD Teacher	.17 FTE

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<sup>2</sup> All further statutory references are to the Education Code unless indicated otherwise.

<sup>3</sup> “FTE” stands for full-time equivalent.

P. High School Earth Sciences Teacher	.17 FTE
Q. K-12 Independent Study Teacher	.50 FTE
R. Teacher-on-Assignment (Wolfskill)	.50 FTE

II. Classroom Support Services:

A. Counselor (elementary)	.50 FTE
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III. Administrative Services:

A. Continuation High School Principal	.25 FTE
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TOTAL: 11.10 FTE

*Competency Criteria*

4. The Resolution set forth the district's competency criteria as follows:

That "competency" for the purposes of Education Code sections 44955, 44956 and 44957 shall be met based upon: (1) current possession of a preliminary or clear credential and "highly qualified status under the No Child Left Behind Act for each subject matter in second teaching assignments and/or grade level in a self-contained class to which the employee will be assigned at the beginning of the 2011-12 school years; and (2) the employee must have taught at least one subject within the department of the proposed secondary assignment, or taught in a self-contained classroom for a proposed elementary assignment, or taught the specific course of AVID, Student Government, Leadership or Invention classes for assignment to one of those courses, for at least one full year within the District in the past five (5) school years (*e.g.*, 2006-2007 or later) while classified as a probationary or permanent employee. If the proposed assignment is in alternative education, the employee must be highly qualified under NCLB in each academic subject currently assigned to the position and have taught in alternative education within the District for at least one full year within the past five (5) school years (*e.g.*, 20060-2007 or later) while classified as a probationary or permanent employee.

*Bumping Restrictions*

5. The Resolution also set forth the district's "bumping" restrictions as follows: That due to the differences in number of classes per day, length of class periods, staring and ending times and unique "block schedule (rotating classes every two days) between the

elementary schools, middle school and high school, it is impractical to allow “partial bumping” (e.g. high school teacher bumping one classes period at middle school) of assignments between the elementary schools, middle school and high school. Further allowing a more senior teacher, to “bump” into a portion of an elementary classroom teaching assignment forcing the class to be taught by two or more teachers who did not plan a “team teaching” assignment is not educationally sound. As a result, senior teachers who are otherwise qualified may not bump into a portion of an elementary classroom teaching assignment and/or bump between elementary schools, middle school and/or high school.

#### *Tie-Breaking Criteria*

6. The Resolution also set forth the district’s tie-breaking criteria as follows:

That as between employees who first rendered paid service on the same date, the order of termination and reemployment pursuant to Education Code sections 44955 and 44846 shall be based solely on the needs of the District and the students thereof, as determined by applying the point system described herein. This system shall be applied only where the implementation of layoffs or reemployment rights actually impacts two or more employees with the same first date of paid service and is applied only to those employees. In case of each tie, points shall be granted to each affected employee based upon all the following criteria. The points for each employee shall be totaled and the employees ranked from highest to lowest with the lowest being subject to layoff and the next lowest being subject to layoff, etc. For reemployment, the employee with the highest total shall be reemployed first and so on. In the case that two or more employees remained tied by point total after totaling points for criteria a-e and the tie must be broken to determine a layoff, then criteria f shall be invoked.

A) Record on file (in the Human Resources Office) of a currently valid preliminary or clear California teaching credential relevant to the current assignment (excludes Intern permit, PIP/STSP or performing assignment on a Board authorization): two (2) points.

B) Record on file of multiple valid preliminary or clear California teaching credentials (excluding authorizations or certifications): one (1) point per additional credential.

- C) Record on file of one or more of the following currently valid subject matter certifications or authorizations on a preliminary or clear credential: Special Education, Reading Certificate, Speech Therapy, Math or Science: two (2) points per certification, not to exceed a maximum total of four (4) points.
- D) Possession of one or more post graduate degree(s): not to exceed a maximum total of two (2) points.
- E) Record on file of supplemental authorizations not listed in paragraph c on a currently valid preliminary or clear credential: one (1) point for each authorization.
- F) In the event of a tie after totaling the points, those employees still tied shall have their relative seniority determined by comparison of the last four digits of the persons social security number with the highest number being the most senior, and the next highest number being next most senior and continuing by highest number.

7. On March 4, 2011, pursuant to the Resolution, Rebecca D. Gillespie, Ed.D., Superintendent of the district, sent preliminary layoff notices to the certificated employees identified for layoff. The preliminary layoff notices enclosed a copy of the resolution and informed the certificated employees of their right to request a hearing. In response to the preliminary layoff notices, the district received seven requests for hearing. On March 24, 2011, Dr. Gillespie sent letters to the certificated employees who requested a layoff hearing, serving upon them the Accusation, Statement to Respondent, form Notice of Defense, Notice of Hearing and copies of relevant sections of the Education and Government codes, and informing them of their right to file a notice of defense if they desired a hearing. Between March 28 and 31, 2011, Notices of Defense were timely served on the district by the seven certificated employees who are respondents in this matter.

#### *Stipulations*

8. At hearing, the parties stipulated that respondents Susan Reycroft and Raquel Ulloa-Mendoza withdrew their requests for hearing, and that the district dismissed the layoff notice served upon respondent Jennifer Hoover.

9. At hearing, the parties further stipulated that the seniority ranking of non-respondent Linda Fox should be corrected on the district's Exhibit 4.b. to reflect a seniority ranking of "3" instead of "2."

### *Challenge to the Competency Criteria – Guadalupe Clanton*

10. Guadalupe Clanton has a seniority date of 8/19/03. She holds a Clear Multiple Subject: General Subjects credential, BCLAD in Spanish, and Clear Single Subject: Foreign Language: Spanish credential. She currently teaches .17 FTE of English Language Development, .33 FTE of Language Lab, .16 FTE of Spanish I, and .34 FTE of Foreign Language: Spanish at Winters High School (WHS). Ms. Clanton is being laid off 1.0 FTE pursuant to the Resolution reductions of High School Spanish Speakers I/II, Language Lab, Foreign Language: Spanish and English Language Development. Ms. Clanton claims that the board's competency criteria requiring that employees teach a subject "within the district for one full year within the past five (5) school years," is unreasonable, and improperly prevents her from bumping junior teachers.

11. According to Dr. Gillespie, the board's competency criteria were "established to most effectively capture our mission to meet students' educational needs in the most effective way." Dr. Gillespie asserted that the requirement that employees teach a subject "within the district" recognizes the uniqueness of the district's contacts, demographics, diverse population, the high needs of students with language needs, and the fact that they are a program improvement district. Dr. Gillespie also asserted that the requirement that employees teach a subject within the district "for one full year within the past five (5) school years," recognizes the district's need to employ teachers who have recent training and successful experience in the classroom. According to Dr. Gillespie, respondent Clanton was considered for bumping into an elementary school assignment, but her prior years of experience as an elementary school teacher were not considered because the board's criteria called for employment "within the district," and "for one full year within the past five (5) school years," and Ms. Clanton had not worked as an elementary school teacher in their district since 2003 when she started working at WHS.

12. Anietta Tice has been the district's administrative secretary/personnel technician since March 15, 2010. Her responsibilities include maintaining the employees' personnel files; ensuring that the employees' credentials are updated; and maintaining the seniority list for all employees. Ms. Tice is aware that respondent Clanton's credential permits her to teach elementary school assignments. At hearing, Ms. Tice admitted that the following six junior teachers did not receive layoff notices, and are being retained to teach elementary school classes:

- a. Ambi Gardner (#60)<sup>4</sup> has a seniority date of 8/16/04. She holds a Clear Multiple Subject: General Subjects credential, and an English Learner Authorization. She currently teaches first grade at Waggoner Elementary School (WES).

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<sup>4</sup> Wherever possible, employee seniority numbers will be included for ease of reference.

- b. Mary Stewart (#65) has a seniority date of 9/27/05. She holds a Clear Multiple Subject: General Subjects credential, and a CLAD. She currently teaches fifth grade at Shirley Rominger Intermediate School (SRIS).
- c. Alejandro Delgadillo (#75) has a seniority date of 8/11/06. He holds a clear Multiple Subject: General Subjects credential, CLAD, and an Educational Specialist: Mild/Moderate certificate. He currently teaches RSP at WES.
- d. Griffin George (#77) has a seniority date of 7/1/07. He holds a Clear Multiple Subject: General Subjects credential, BCLAD: Spanish, Clear Single Subject: Spanish credential, and Clear Administrative Services certificate. He currently teaches Kindergarten at WES.
- e. Mariaelena Ochoa (#82) has a seniority date of 8/10/07. She holds a Clear Multiple Subject: General Subjects credential, and BCLAD: Spanish. She currently teaches third grade Dual Immersion at WES.
- f. Anita Enriquez (#86) has a seniority date of 8/11/08. She holds a Clear Multiple Subject: General Subjects credential, BCLAD: Spanish, and SA: English, Spanish certificate. She currently teaches second grade Dual Immersion at WES.

13. The evidence established that respondent Clanton has been teaching students from first grade through high school since August 1990. She was a first grade bilingual student teacher at Rosedale Elementary School in Chico, California from August 1990 through December 1990; an English Language Development teacher at Gridley High School in Gridley, California from January 1991 through June 1991; a second grade bilingual teacher at Wyandotte Avenue School in Oroville, California from 1991 through 2003; and a Spanish and English Language Development teacher at Winters High School from 2003 to present. In addition, respondent Clanton received Compelling Conversations and Sheltered Instruction Observation Protocol (SIOP) training through the district “up through last year.” According to respondent Clanton, the training courses apply in both elementary and high schools.

14. Education Code section 44955, subdivision (b), provides, in pertinent part, that, “the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.”

15. Education Code section 44955, subdivision (c), provides that:

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any

certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

16. Despite being senior to six junior teachers and having elementary school teaching experience, respondent Clanton received a layoff notice based on the district's application of the competency criteria. However, no evidence was presented to demonstrate that teachers who have not taught in a particular subject in five years or who have not taught to the same level in five years have ineffective teaching skills and strategies. Furthermore, a district may not defeat the clear intent of legislation designed to retain senior teachers in the event of layoffs, by defining competency in a narrow manner, applying the criteria in a wholesale manner and declaring those senior teachers who do not meet the criteria incompetent to teach in their areas of credentialing.<sup>5</sup> The competency criteria adopted by the board does not consider the skills and qualifications of the teacher threatened with layoff, and prevent senior teachers from bumping junior teachers. Therefore, it violates the provisions of Education Code section 44955, subdivisions (b) and (c).

17. Guadalupe Clanton is certificated and competent to teach the elementary classes that six junior teachers are being retained to teach. Therefore, her layoff notice must be rescinded.

#### *Challenge to the Tie-Breaking Criteria – Dorothea Bell*

18. Dorothea Bell has a seniority date of 8/11/08. She holds a Clear Multiple Subject: General Subjects credential, Clear Reading Certificate, and CLAD. She is currently teaching fourth grade at SRIS. Ms. Bell is being laid off 1.0 FTE pursuant to the Resolution reductions of Grade 4-5 Elementary Teachers. Ms. Bell claims that the district failed to give her credit for possession of a master's degree in teaching, prior to applying the tie-breaking criteria, and as a result, she was improperly noticed for layoff.

19. On or before February 2, 2011, Ms. Tice sent a form to respondent Bell requesting that she update and verify her date of hire of 8/11/08, tenured contract status, 1.0 FTE, and possession of a Multiple Subject: CLAD credential with an expiration date of 7/1/14, and reading certificate. On February 2, 2011, respondent Bell confirmed that the information on the form was correct. According to Ms. Tice, in its Resolution, the board established February 10, 2011 as the last date on which certificated employees "must have filed documents ... evidencing credentials ... in order to be considered." On February 28, 2011, Ms. Tice applied the board's tie-breaking criteria to determine teacher bumping rights.

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<sup>5</sup> See *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555.



20. After applying tie-breaking criteria A) through F), Ms. Tice determined the seniority rankings for certificated teachers with a seniority date of 8/11/08 and who hold a Multiple Subject credential to be as follows:

Anita Enriquez (#86)	-	4 points	-	Rank 1
Dorothea Bell (#88)	-	4 points	-	Rank 2
Norma Robles (#85)	-	2 points	-	Rank 3

According to Ms. Tice, as a result of the application of the tie-breaking criteria, Anita Rodriguez did not receive a notice of layoff.

21. At hearing, Ms. Tice asserted that at the time of her application of the tie-breaking criteria, she was unaware that respondent Bell was in possession of a master's degree because "it was not on her skills screen." According to Ms. Tice, she first became aware of the master's degree when respondent Bell brought the transcript to her in March 2011, and Ms. Tice added the master's degree to respondent Bell's skills screen. However, Ms. Tice also admitted that she may have had email exchanges with respondent Bell regarding her master's degree prior to February 2011.

22. In an email dated September 20, 2010, respondent Bell requested and notified Ms. Tice of the following:

Is there any way for me to see a copy of the sheet that records my units, OR for you to tell me the last units that have been recorded?

I completed a Reading Certificate over the past two years, and I don't think any of those units have yet been recorded.

I believe you have a transcript of my Master's degree, which I received in 2009. If you are missing everything after that, then I will send you a transcript of the reading certificate classes.

23. In her response on September 20, 2010, Ms. Tice stated, in pertinent part:

The sheet I sent to you is the sheet from your personnel file. There is a piece of paper that has a list of schools and the number of units earned that Linda B. wrote up. There are a bunch of transcripts attached. You are welcome to come over and look at the paperwork or I can make copies of everything I have and send them to you via intra-district mail. Let me know. I do not see the Master's degree transcript.

24. In her response on September 20, 2010, respondent Bell stated, in pertinent part:

If it wouldn't be too much trouble, please send copies of what you have via district mail. I will add the Master's degree and reading certificate coursework transcripts if that's all that is missing.

25. The evidence established that Ms. Tice was aware of respondent Bell's possession of a master's degree, yet neither sought to verify or confirm possession of the master's degree, nor include it when applying the board's tie-breaking criteria. Credit for the master's degree would have given respondent Bell six points, and the number one seniority ranking, which would have protected her from layoff. Therefore, her layoff notice must be rescinded.

26. There was no evidence that the District proposes to eliminate any services that are mandated by state or federal laws or regulations.

27. Any other assertions put forth by the parties at the hearing and not addressed above are found to be without merit and are rejected.

### LEGAL CONCLUSIONS

1. The district complied with all notice and jurisdictional requirements set forth in sections 44949 and 44955.

2. The services identified in the Resolution are particular kinds of services that may be reduced or eliminated under section 44955. The board's decision to reduce or eliminate the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or elimination of services relates solely to the welfare of the district's schools and pupils within the meaning of section 44949.

3. As set forth in Factual Findings 16 and 17, the district shall rescind the preliminary layoff notice served upon respondent Guadalupe Clanton.

4. As set forth in Factual Finding 25, the district shall rescind the preliminary layoff notice served upon respondent Dorothea Bell.

5. Except as set forth in Legal Conclusions 3 and 4, cause exists to reduce certificated employees of the district due to the reduction or elimination of particular kinds of services. Except as set forth in Legal Conclusions 3 and 4, the district properly identified the certificated employees to be laid off as directed by the board.

6. Except as set forth in Legal Conclusions 3 and 4, no junior certificated employee is scheduled to be retained to perform services that a more senior respondent is certificated and competent to render.

7. Except as set forth in Legal Conclusions 3 and 4, cause exists to give notice to the remaining respondents that their services will be reduced or will not be required for the 2011-2012 school year because of the reduction or elimination of particular kinds of services.

### RECOMMENDATION

1. Pursuant to Legal Conclusion 3, the district shall rescind the preliminary layoff notice served upon Guadalupe Clanton.

2. Pursuant to Legal Conclusion 4, the district shall rescind the preliminary layoff notice served upon Dorothea Bell.

3. Except as provided in Recommendations 1 and 2, notice may be given to the remaining respondents that their services will be reduced or will not be required for the 2011-2012 school year. Notice shall be given in inverse order of seniority.

DATED: May 3, 2011

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REBECCA M. WESTMORE  
Administrative Law Judge  
Office of Administrative Hearings